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March 20, 2020

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Hon. Edward S. Kiel, U.S.M.J.
Frank R. Lautenberg U.S. Post
Office & Courthouse Building
2 Federal Square
Courtroom 8, Newark, NJ 07102

**Re: United States v. Gregory Cooper
Criminal No. 19- 00112 (MCA)**

Dear Judge Kiel:

Please accept this letter in lieu of a more formal supplement to my earlier request for bail. In addition to the arguments articulated in my earlier letter, I respectfully request the Court take into consideration the recent public health crisis involving the COVID-19 pandemic.

As of March 12, 2020, the new strain of coronavirus that causes COVID-19 has infected over 132,300 people, leading to at least 4,954 deaths worldwide.¹ On March 9, 2020, Governor Murphy declared a State of Emergency and a Public Health Emergency in response to novel coronavirus outbreak in relation to COVID-19. See <https://www.nj.gov/governor/news/news/562020/20200309b.shtml> (last accessed March 19, 2020). On March 11, 2020, the World Health Organization officially classified COVID-19 as a pandemic.² Additional protective measures have been taken including [list state and/or local restrictions on group gatherings, school closures, etc]

As of March 19, 2020, there are no less than 742 positive cases of COVID-19 in New Jersey and at least nine deaths. See, <https://www.nj.com/coronavirus/2020/03/coronavirus-outbreak-in-nj-surges-to-at-least-742-cases-with-6-deaths-318-new-positive-tests-announced.html> (last accessed March 19, 2020). On March 18, 2020, a corrections officer at the Bergen County Correctional Center presumptively tested positive for COVID-19, representing the

¹ *Coronavirus Map: Tracking the Spread of the Outbreak*, The New York Times (March 12, 2020), at <https://nyti.ms/2U4kmud> (updating regularly).

² *WHO Characterizes COVID-19 as a Pandemic*, World Health Organization (March 11, 2020) at <https://bit.ly/2W8dwpS> (last accessed March 19, 2020).

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virus's first incursion into New Jersey's correctional facilities. See <https://dailyvoice.com/new-jersey/hackensack/police-fire/bergen-county-jail-corrections-officer-tests-positive-for-coronavirus-7-others-self-quarantine/785257/> (last accessed March 19, 2020). The CDC has issued guidance that individuals at higher risk of contracting COVID-19 — adults over 60 years old and people with chronic medical conditions, such as lung disease, heart disease, and diabetes - take immediate preventative actions, including avoiding crowded areas and staying home as much as possible.³ Conditions of pretrial confinement create the ideal environment for the transmission of contagious disease.⁴ Inmates cycle in and out of detention facilities from all over the world, the country, and the state, and people who work in the facilities, including correctional officers, and care and service providers, leave and return daily, generally without screening. Incarcerated people have poorer health than the general population, and even at the best of times, medical care is limited.⁵ Many people who are incarcerated also have chronic conditions, like diabetes or HIV, which makes them vulnerable to severe forms of COVID-19. Per public health experts, incarcerated individuals “are at special risk of infection, given their living situations,” and “may also be less able to participate in proactive measures to keep themselves safe;” “infection control is challenging in these settings.”⁶ Outbreaks of the flu regularly occur in jails, and during the H1N1 epidemic in 2009, many jails and prisons addressed a high number of cases.⁷

In China, officials have confirmed the coronavirus spreading at a rapid pace in Chinese prisons, counting 500 cases.⁸ Secretary of State Mike Pompeo has called for Iran to release Americans detained there because of the “deeply troubling” “[r]eports that COVID-19 has spread to Iranian prisons,” noting that “[t]heir detention amid increasingly deteriorating conditions defies

³ *People at Risk for Serious Illness from COVID-19*, CDC (March 12, 2020) at <https://bit.ly/2vgUt1P> (last accessed March 19, 2020).

⁴ Joseph A. Bick (2007). Infection Control in Jails and Prisons. *Clinical Infectious Diseases* 45(8):1047-1055, at <https://doi.org/10.1086/521910>. (last accessed March 19, 2020).

⁵ Laura M. Maruschak et al. (2015). Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12. NCJ 248491. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, at <https://www.bjs.gov/content/pub/pdf/mpsfpi1112.pdf> (last accessed March 19, 2020).

⁶ “Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States,” (March 2, 2020), at <https://bit.ly/2W9V6oS> (last accessed March 19, 2020).

⁷ *Prisons and Jails are Vulnerable to COVID-19 Outbreaks*, The Verge (Mar. 7, 2020) at <https://bit.ly/2TNcNZY> (last accessed March 19, 2020).

⁸ Rhea Mahbubani, *Chinese Jails Have Become Hotbeds of Coronavirus As More Than 500 Cases Have Erupted, Prompting the Ouster of Several Officials*, Business Insider (Feb. 21, 2020) at <https://bit.ly/2vSzSRT> (last accessed March 19, 2020).

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basic human decency.”⁹ Courts across Iran have granted 54,000 inmates furlough as part of the measures to contain coronavirus across the country.¹⁰

In the United States, steps are already being taken in some jurisdictions to facilitate the release of elderly and sick prisoners and to reduce jail populations by discouraging and refusing the admission of individuals arrested on non-violent misdemeanor charges.¹¹ The Cuyahoga County Jail, serving Cleveland, Ohio, is acting to release defendants in response to the Covid-19 public health emergency. See <https://fox8.com/news/coronavirus/cuyahoga-county-jail-releasing-some-inmates-early-to-help-minimize-potential-coronavirus-outbreak/> (last accessed March 19, 2020) (“Dozens of inmates are getting out of jail sooner than expected to help reduce the population inside the Cuyahoga County jail.”). The Los Angeles county jail is “releasing inmates and making fewer arrests to reduce the risk of a coronavirus outbreak in the jail and prison systems” because the “population within our jails is a vulnerable population just by who they are, where they are located, so we’re protecting that population from potential exposure.” See <https://www.buzzfeednews.com/article/salvadorhernandez/los-angeles-coronavirus-inmates-early-release> (last accessed March 19, 2020). The Travis County jail, serving Austin, Texas, has “been releasing some inmates to reduce the chance of the new coronavirus spreading in the county jail and harming people with existing health conditions.” See <https://www.statesman.com/news/20200316/travis-county-judges-releasing-inmates-to-limit-coronavirus-spread?fbclid=IwAR3VKawwn3bwSLSO9jXBxXNRuaWd1DRLsCBFc-ZkPN1INWW8xnzLPvZYNO4> (last accessed March 19, 2020). U.S. Immigration and Customs Enforcement (ICE) will temporarily adjust its enforcement posture to focus enforcement on public safety risks and individuals subject to mandatory detention based on criminal grounds. See <https://www.ice.gov/news/releases/updated-ice-statement-covid-19> (last accessed March 19, 2020). It almost goes without saying that as additional people are arrested who have been out in the community as the coronavirus spreads, they will, if not symptomatic, be brought into the

⁹ Jennifer Hansler and Kylie Atwood, *Pompeo calls for humanitarian release of wrongfully detained Americans in Iran amid coronavirus outbreak*, CNN (Mar. 10, 2020) at <https://cnn.it/2W4OpV7> (last accessed March 19, 2020).

¹⁰ Claudia Lauer and Colleen Long, *US Prisons, Jails On Alert for Spread of Coronavirus*, The Associated Press (Mar. 7, 2020) at <https://apnews.com/af98b0a38aaabedbc059092db356697> (last accessed March 19, 2020).

¹¹ In New York Brooklyn District Attorney Eric Gonzalez, joined by public health experts, has asked Governor Cuomo to grant emergency clemencies to elderly and sick prisoners (Sarah Lustbader, *Coronavirus: Sentenced to COVID-19*, The Daily Appeal (Mar. 12, 2020) at (last accessed March 19, 2020) <https://theappeal.org/sentenced-to-covid-19/>) (last accessed March 19, 2020); Cuyahoga County (Ohio) is holding mass pleas and bail hearings to reduce the current jail population (<https://www.cleveland.com/court-justice/2020/03/cuyahoga-county-officials-will-hold-mass-plea-hearings-to-reduce-jail-population-over-coronavirus-concerns.html>) (last accessed March 19, 2020); Mahoning County (Ohio) jail is refusing all non-violent misdemeanor arrestees (<https://www.wkbn.com/news/coronavirus/mahoning-county-jail-refusing-some-inmates-due-to-coronavirus-outbreak/>) (last accessed March 19, 2020); see also Collin County (TX) (<https://www.dallasnews.com/news/public-health/2020/03/12/facing-coronavirus-concerns-collin-county-sheriff-asks-police-not-to-bring-petty-criminals-to-jail/>) (last accessed March 19, 2020);

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correctional facility, and held with the existing population, potentially introducing COVID-19 into this population that is held in large numbers, close quarters, and low sanitary conditions.

Chris Beyrer, MD, MPH, Professor of Epidemiology at the Johns Hopkins Bloomberg School of Public Health, has certified in relation to this issue that “COVID-19 poses a serious risk to inmates and workers in detention facilities” and that “[r]eleasing as many inmates as possible is important to protect the health of inmates, the health of correctional facility staff, the health of health care workers at jails and other detention facilities, and the health of the community as a whole.” See Attached Certification of Dr. Beyrer.

Dr. Jonathan Louis Golob, Assistant Professor at University of Michigan School of Medicine at Ann Arbor and a specialist in infectious disease, certified in relation to this issue that vulnerable people living in an institutional setting are “at grave risk of severe illness and death from COVID-19.” See Attached Certification of Dr. Golob.

Robert B. Greifinger, M.D., a medical expert who has managed the medical care for inmates in the custody of New York City (Rikers Island) and the New York State prison system and currently monitors the medical care in three large county jails for Federal Courts, certified in relation to this issue that:

Immigration detention facilities are enclosed environments, much like the cruise ships that were the site of the largest concentrated outbreaks of COVID-19. Immigration detention facilities have even greater risk of infectious spread because of conditions of crowding, the proportion of vulnerable people detained, and often scant medical care resources. People live in close quarters and cannot achieve the “social distancing” needed to effectively prevent the spread of COVID-19. Toilets, sinks, and showers are shared, without disinfection between use. Food preparation and food service is communal, with little opportunity for surface disinfection. Staff arrive and leave on a shift basis; there is little to no ability to adequately screen staff for new, asymptomatic infection.

* * *

In my opinion, the public health recommendation is to release high-risk people from detention, given the heightened risks to their health and safety, especially given the lack of a viable vaccine for prevention or effective treatment at this stage.

See Attached Certification of Dr. Greifinger.

Dr. Jaimie Meyer, an Assistant Professor of Medicine at Yale School of Medicine and Assistant Clinical Professor of Nursing at Yale School of Nursing in New Haven, Connecticut, who has worked for over a decade on infectious diseases in the context of jails and prisons, certified

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in relation to this issue that “[t]he risk posed by infectious diseases in jails and prisons is significantly higher than in the community, both in terms of risk of transmission, exposure, and harm to individuals who become infected” and that “it is my professional judgment that these facilities are dangerously under-equipped and ill-prepared to prevent and manage a COVID-19 outbreak, which would result in severe harm to detained individuals, jail and prison staff, and the broader community.” See Attached Certification of Dr. Meyer.

Dr. Meyer further certified that it was her “strong opinion that individuals who can safely and appropriately remain in the community not be placed in ICE’s NYC-area jails at this time.” See Attached Certification of Dr. Meyer. Dr. Meyer was “also strongly of the opinion that individuals who are already in those facilities should be evaluated for release.” See Attached Certification of Dr. Meyer.

Dr. Mark Stern, formerly the Assistant Secretary for Health Care at the Washington State Department of Corrections, certified in relation to this issue that “[f]or detainees who are at high risk of serious illness or death should they contract the COVID-19 virus, release from detention is a critically important way to meaningfully mitigate that risk. Additionally, the release of detainees who present a low risk of harm to the community is also an important mitigation strategy as it reduces the total number of detainees in a facility.” See Attached Certification of Dr. Stern.

In a “Joint Statement from Elected Prosecutors on Covid-19 and Addressing the Rights and Needs of those in Custody,” dated March 2020, a group of elected prosecutors proffered the following recommendations:

- Adopt cite and release policies for offenses which pose no immediate physical threat to the community, including simple possession of controlled substances.
- Release all individuals who are being detained solely because they can’t afford cash bail, unless they pose a serious risk to public safety.
- Reduce the prison population to minimize sharing of cells and ensure that there are sufficient medical quarantine beds, and enough staff, to promote the health and safety of staff, those incarcerated, and visitors.
- Identify and release the following people immediately, unless doing so would pose a serious risk to the physical safety of the community:
 - Individuals who are elderly;
 - Populations that the CDC has classified as vulnerable (those with asthma, cancer, heart disease, lung disease, and diabetes);
 - People in local jails who are within 6 months of completing their sentence; and

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- People incarcerated due to technical violations of probation and parole.
- Put in place procedures and advocate for reforms that enable past lengthy sentences to be revisited and support release for those individuals who can safely return to the community.

See Attached “Joint Statement from Elected Prosecutors On Covid-19 and Addressing the Rights and Needs of those in Custody.”

The Hon. Alison J. Nathan, D.N.J. for the S.D.N.Y., recently granted an emergent bail motion finding, in part, that “inmates may be at a heightened risk of contracting COVID-19 should an outbreak develop.” United States of America v. Dante Stephens, No. 15-cr-95 (AJN), unpub. op. (S.D.N.Y March 18, 2020).

The circumstances that existed when Defendant was ordered detained have now substantially changed. There is a pandemic that poses a direct risk that is far greater if Defendant continues to be detained during this public health crisis.

Respectfully,

A handwritten signature in blue ink, appearing to read "Christopher D. Adams".

CHRISTOPHER D. ADAMS

CDA:ls
cc: AUSA Christopher Amore